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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,460	04/19/2005	Karl Tiefenbacher	WEB-42803	8262

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EXAMINER	
TRAN LIEN, THUY	
ART UNIT	PAPER NUMBER
1794	
MAIL DATE	DELIVERY MODE
05/08/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/529,460	TIEFENBACHER, KARL	
	Examiner	Art Unit	
	Lien T. Tran	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 April 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *21-45* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *21-38 and 40-45* is/are rejected.

7)☒ Claim(s) *39* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *3/28/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because of the implied language such as " invention relates". Correction is required. See MPEP § 608.01(b).

Claims 21-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 21: line 7, the term " sprinkle material" is unclear because it is not known what material this term includes or excludes. The scope of the claim cannot be determined.

In claim 22, the recitation of " the article" is unclear because it is not known what article the claim is referring to; there is no antecedent basis.

Claims 24, 26 has the same problem as claim 22.

Claim 30 is vague and indefinite; it is not clear what applicant is claiming. Is the pre-product selected from the group recited or the pre-product made into products cited or

what? Also, terms such as fresh baked, long-life baked are indefinite because they are relative. What would be considered as fresh or long-life.

In claim 37, the recitation of " heat treatment" on line 3 is unclear because it is not known which heat treatment the claim is referring to; the heat treatment in claim 36 or the one recited in claim 21.

In claim 44: Lines 4-5, " the baking operation" does not have antecedent basis.

Claim 45 has the same problem as claim 44.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 21, 30-32,35, 38, 43-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Schiffmann et al (GB 2228856).

Schiffmann et al disclose a brown and serve product and a process of making it. The process comprises the steps of baking yeast-raised products to a point of rigidity without any degree of browning, cooling the baked products, treating the baked product on at least one surface with an aqueous solution of sodium or potassium hydroxide in amount sufficient to provide browning of the treated surface and packaging the treated product in a container. The products are made from dough and include rolls, breadsticks, pretzels, breads or pastries or other such products that are fully formed and prebaked to the exact and size. (see pages 4, 5, 6 ,7 and the examples)

Schiffmann et al disclose the steps and product as claimed. Heating in a microwave will give hot air; thus, it is heating with hot air.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 22-29, 33-34,36-37,40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schiffmann et al.

Schiffmann et al do not disclose baking to the moisture content cited in claims 22-29, chilling or freezing the baked pieces cited in claims 33-34, multiple steps of heating as in claims 36-37, mixing the lye with modified starch or modified cereal flour as in claim 40 and chilling or freezing the product before treating with lye as in claims 41-42.

It would have been obvious to one skilled in the art to bake the product to any varying moisture content depending on the type of product and the degree of doneness desired. The moisture content is a result-effective variable which can readily be

determined by one skilled in the art. It would have been obvious to freeze or chill the baked product prior to treating when long term storage is desired before treating the surface of the product for browning. It would have been obvious to subject the product to multiple steps of heating depending on the degree of browning and the moisture content wanted in the final product. Schiffmann et al disclose additives can be added to the alkaline solution. It would have been obvious to one skilled in the art to add modified starch or flour to the solution when desiring to thicken the solution. Starch and flour are well known thickening agent.

Claim 39 is free of prior art because Schiffmann et al do not disclose the heat treating step as recited in claim 39. There is no suggestion to modify the Schiffmann et al heat treating step to include the steps as claimed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Walsh discloses a method for making hard pretzels.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

May 6, 2008

/Lien T Tran/

Primary Examiner, Art Unit 1794

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